

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LISA MENNINGER,

Plaintiff,

v.

PPD DEVELOPMENT, L.P.,

Defendant.

Civil Action No: 1:19-CV-11441-LTS

**PLAINTIFF'S SECOND SUPPLEMENTAL PROPOSED JURY INSTRUCTION**

Plaintiff Lisa Menninger respectfully submits and requests the following supplemental proposed jury instruction.

**SUPPLEMENTAL INSTRUCTION NO. 2.**

If an employer has a concern about whether an employee with a known disability can perform her job, the law permits the employer to make inquiries about the employee's ability to perform job-related functions.<sup>1</sup>

Permissible inquiries include asking for a medical certification from the employee that the employee is able to perform essential job functions with or without accommodation.<sup>2</sup>

Additionally, if the employer has a reasonable belief based on objective evidence that a medical condition will impair an employee's ability to perform the essential functions of her job, then the employer may require the employee to submit to an independent medical examination.<sup>3</sup>

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<sup>1</sup> 42 U.S.C. § 12112(d)(4)(B) ("A covered entity may make inquiries into the ability of an employee to perform job-related functions."). See *Grenier v. Cyanamid Plastics, Inc.*, 70 F.3d 667, 672 (1st Cir. 1995) (citing 29 C.F.R. Pt. 1630, App. 1630.14(a)) (interpreting identical language in 42 U.S.C. § 12112(d)(2)(B) regarding preemployment inquiries to applicants).

<sup>2</sup> See *Grenier v. Cyanamid Plastics, Inc.*, 70 F.3d 667, 676 (1st Cir. 1995).

<sup>3</sup> *Coffman v. Indianapolis Fire Dep't*, 578 F.3d 559, 565 (7th Cir. 2009) (cited favorably by *Lopez-Lopez v. Robinson Sch.*, 958 F.3d 96, 106 (1st Cir. 2020)); *LaCroix v. Bos. Police Dep't*, No. 19-CV-11463-DJC, 2022 WL 876885, at \*4 (D. Mass. Mar. 24, 2022); 29 C.F.R. § 1630.14(c); see 42 U.S.C. § 12112(4).

Respectfully submitted,  
LISA MENNINGER  
By her attorneys,

*/s/ Hampton M. Watson*

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**CERTIFICATE OF SERVICE**

I, Hampton M. Watson, counsel for Plaintiff, hereby certify that on March 27, 2023, I caused a copy of the within document to be filed using the Court's CM/ECF system, which will send notification of such filing electronically to all registered participants.

*/s/ Hampton M. Watson*

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Hampton M. Watson